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Risk Management via Takaful from a Perspective of Maqasid of Shariah

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Abstract

Risk management is used as an approach to handle risk through various methods including takaful. Takaful's strong growth suggests it as an effective risk management and ethical promoting tool that conforms to the maqasid of Shariah. This paper focuses on qualitative research method in discussing the overriding goals of Islam through takaful. The paper introduces protection of human dignity that must be prioritized to honour and treasure individuals without discrimination. It discusses Islamic virtuous goals and values that are highly thought of in takaful which is believed to pave its future direction to achieve the universal objectives of Shariah.

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1. Introduction

Risk management is vital in Islam that promotes the social and economic well being of the society. Many Islamic financial institutions are increasing their focus on risk management to sustain

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competitiveness and to participate more globally. Takaful being a subset of risk management is a primary tool used in the Islamic finance industry to safeguard the life and wealth of Ummah. Takaful helps in reducing worry and fear, indemnifying loss and damage, and providing protection to the honor, his descendants and his property or wealth according to the injunctions of Shariah. Indeed, such noble features of takaful enables it to position itself to become the financial sector that promotes the objectives of Shariah in the global economy as detailed in the other parts of this paper.

Maqasid of Shariah or objectives of Shariah is the foundation for the Shariah rules and regulations. These Shariah injunctions are source of reference and guidelines for Islamic financial institutions (IFIs). They interweave the business operations of takaful with the main concern of providing mutual protection benefits and dispelling or reducing peril through shared responsibility. This paper therefore examines the concept of takaful as the risk management method in the framework of maqasid of Shariah.

The organization of this paper is as follows: the first part provides an introduction to the paper; the second part presents a literature review of risk management, takaful and maqasid Shariah; and the third part discusses the methodology adopted. After delineating the essentials of risk management, takaful and the fundamentals of maqasid of Shariah, the forth part focuses on the significance of maqasid Shariah in the risk management realm, specifically takaful; and finally the fifth part concludes the paper with some suggestions on the future direction of takaful.

2. Literature Review

There is vast literature in the disciplines of risk management, takaful and maqasid Shariah; however in the search for relevant literature, few articles have been published in different journals. Among them is the article on 'Risk and Risk Management of Takaful Industry' in the *Journal of Global Business and Economics*, in which the research was carried out to identify the management of risk by takaful operators and the direct relationship between Shariah compliance and risk management (Abdul Aris, 2012). In another journal, 'Enterprise Risk Management', the article 'Risk Management in Takaful' explained the various types of risks associated with takaful business and the challenges that need to be addressed for enhancement of risk management practices among Takaful operators (Akhter, 2010). The article 'Achieving Maqasid al Shariah through Takaful' explained maqasid al Shariah and the concept of takaful in general (www.kantakji.com/fiqh/Files/Fatawa/w240.pdf). Another article, 'Fiqh Awlawiyyat in Retakaful Between RBC Standard and Islamic Institutions' discussed the development of both fiqh awlawiyyat and risk-based capital (RBC) and the application of the former in retakaful in the context of the latter and Islamic financial institutions (Ismail, 2009). There is also a recent report on takaful, 'DOME International Takaful Report 2012-2013' that presents Shariah and legal analysis for establishing takaful and retakaful in the Gulf Cooperation Council (GCC) countries (Khan, 2012).

The articles discussed above provided some insights into the issue of risk management in takaful; however, they are resoundingly silent on few aspects. This paper will look closely into the missing aspect of risk management in takaful from the perspective of maqasid of Shariah, and adds on to the rather limited literature. This study specifically addresses takaful as a method to manage risk that simultaneously promotes the goals and purposes of Shariah. In fact, the research departs from previous studies that vest takaful with protection of life and protection of wealth in achieving maqasid of Shariah to a greater spectrum with particular emphasis on the protection of human dignity as another objective of takaful. Thus, this paper continues with reviews of literature on risk management, takaful and maqasid of Shariah to provide a good understanding of the different disciplines involved.

2..1 Risk Management

Risk is often defined as uncertainty about the occurrence of loss, variability in future outcomes, possibility of adverse deviation from a desired outcome that is expected or hoped for, variation in possible

outcomes that exist in a given situation, and possibility that a sentient entity can incur a loss (Rejda, 2008). Risk management is an approach used to handle risk, and there are a number of methods used to manage risk that includes avoidance, loss control, retention, non-insurance transfers, and insurance or takaful.

In Islam, risk is defined similarly with additional reference to submit to the Almighty Allah upon making efforts and prayers to achieve goodness in this world and the hereafter as every event in the life of a Muslim is fated and only the Almighty Allah knows best the fate and future of every being. This is evidenced in a number of instances, and the famous is as stated in the hadith, Sahih al Bukhari narrated by Anas bin Malik, “When the Holy Prophet (pbuh) asked a Bedouin Arab who entered the mosque with his camel left outside untied, if his camel would run astray, he said “Insha Allah” I put my trust in God. The Prophet (pbuh) then said: “tie up your camel first then put your trust in God” as cited in INCEIF, 2012. This particular conversation between the Prophet and the Bedouin indicates the significance of making effort of reducing risk or loss prior to accepting fate.

Risk management in Islam is not merely about reducing risk but how to manage it effectively with reference to Shariah principles. The management of risk in Islam therefore has to conform to the objectives of Shariah that promotes tranquility and harmony among its Ummah by means of providing protection and warding off harm and disaster for the well being of Ummah in this life and the hereafter.

2.2 *Takaful Concept*

The word takaful derived from the word ‘kafala’, which means guarantee; takaful then means joint guarantee. The concept of takaful is based on mutual protection and shared responsibility that can be referred to the practice of ‘aqilah’ in the payment of blood money or diyyah during the Arab tribal custom which then was adapted into Islamic practice through the verdict of the Prophet (Engku Ali, 2008). At present, the participants jointly agree to contribute a sum of money in a form of donation ‘tabarru’ into a shared pool with the intention to help each other to reduce risk. The Malaysia Takaful Act 1984, section 2 defines ‘takaful’ as a scheme based on brotherhood, solidarity and mutual assistance. The Guidelines on Takaful Operational Framework (TOF) by Bank Negara Malaysia is for the takaful operators to adhere to the fundamental obligations towards participants in terms of conformance to Shariah principles, undertaking of fiduciary duties, and meeting prudential standards (BNM, 2012).

The takaful model is based on the divine concept of ‘ta’awun’ or helping each other, or mutual assistance. The concept of ta’awun is as recommended in the holy Quran: “Help (ta’awun) ye one another in righteousness (birr) and piety, but help ye not one another in sin and rancor, fear Allah, for Allah is strict in punishment. Such quality of helping each other is in line with the principles of Shariah that promotes risk sharing through spreading the risk to as many people as possible.

2.3 *The Objectives of Shariah (Maqasid Shariah)*

Maqa’id Shariah is literally translated as the objectives of the Islamic law. Maqasid shariah comprises of all the benefits and advantages for the mankind, which simultaneously wards off evil and other form of harms from the Ummah. Maqa’id shariah is vitally necessary to be delineated so as to provide an understanding on the rationale of the Shariah guidelines for the mankind to live in this world according to the Islamic way of life. Indeed, maqasid Shariah enables a better appreciation of Islam as well as a comprehensive appreciation of the Almighty’s rules and regulation.

Maqasid shariah is classified according to different dimensions: the traditional classification of maqasid Shariah is according to the levels of necessity, scope of the rulings with the aim to achieve the purpose, scope of people included in the purpose, and level of universality of the purpose. The modern or contemporary scholars classify maqasid shariah according to general objectives, specific objectives and partial maqasid (Auda, 2008).

The traditional scholars including al-Shatibi classify the general objectives into three sub-categories according to the hierarchy of needs, or levels of necessity: the essentials or necessities (*daruriyyah*), the needs (*hajiyyah*), and the luxuries (*tahsiniyyah*) (Al-Raysuni, 2005). Scholars like Al-Ghazali, Ibn al-Hajib and al-Shatibi defined *daruriyyah* as the preservation and safeguarding of five fundamentals in one's life that includes protection of religion (*din*), protection of life (*nafs*), protection of intellect (*'aql*), protection of wealth (*mal*), and protection of lineage (*nasl*). These are regarded the essential needs that a man requires for his well being in this world and the hereafter. None of these essential needs can be ignored, for it will create a disorder in this world and man will not be able to fulfill his requirement as a *khalifah* in this world and achieve success in the world hereafter (Ibn Ashur, 2006). This classification shows the wide-range of dimensions and varieties of *maqasid Shariah* which aim to provide ease and eliminate or reduce hardship to the Ummah.

3. Methodology

This paper focuses on qualitative research method in discussing *takaful* as an effective risk management tool using library research approach. Precisely, this study employed two stages procedure to analyse *takaful* and its relation to *maqasid* of *Shariah*. Firstly, the literature on risk management, *takaful* and *maqasid* *Shariah* are obtained from secondary data that included academic journals, books, conference papers and other periodicals. These information are then reviewed and analysed for its relevancy, adequacy and significance of the study. The study also did close and informal interviews with respective *Shariah* scholars in understanding the objectives of *Shariah* and its relevance to *takaful*.

Next, analysis of risk management in *takaful* is carried out by highlighting the main protections provided in *takaful*. In this second stage, the study examines the relevance of the objectives of *takaful* and the objectives of *Shariah*, and highlights its significance to achieve the noble goals.

4. Significance of *Maqasid Shariah* in Risk Management realm: *Takaful*

Takaful is a method used in risk management to reduce individual losses by spreading risks amongst a wider community. More importantly, the risk management initiatives are to conform to *Shariah* rules and guidelines as it is the most prominent issue in the *takaful* industry. This is well supported by referring to the first guiding principle in the TOF that necessitates the *takaful* operator to conform to *Shariah* principles and to be consistent in the essential features of *Takaful*. Conforming to *Shariah* principles is the major concern in the management of risk in *takaful* as it has to achieve the objectives of *Shariah*, precisely the protection of life, protection of wealth, and protection of dignity.

4.1 Life protection

In term of protection of life, it is clear that the concept of *takaful*, namely joint guarantee and mutual help are well within the *maqasid shariah* framework to provide protection to the participants against any mishap through mutual assistance and mutual sharing of risk. In the spirit of mutual assistance, it is the right and duties of individuals to help others, also known the concept of '*fard kifayah*' or social obligation that puts responsibility on those who are capable or better off to assist those who are not capable or worse off. It is an obligation that connotes compulsory or '*fard*' which means not optional. Indeed, mutual cooperation and assistance is among the primary underlying objectives of *takaful*. Thus, *takaful* is actually one of the means to achieve this noble objective.

The presence of *takaful* is essential and required in society as a man's life is structured in a complex manner that is made up of the rich and the poor, the bright and the dull, the strong and the sick, the haves and the have-nots. This implicates mutual dependency among society and therefore mutual cooperation and social responsibility is needed (Qur'an, 2:255; 4:37; 8:74; 16:74). Human beings are expected to

cooperate among themselves to properly perform the task and mission of khilafah (Qur'an, 11:61) so that it is in line with their role as 'ibad Allah' or the slaves or also known as the worshippers of Allah.

Inequality requires the rich to help the poor and the needy (Qur'an, 9:71; 24:22) rather than taking the opportunity to exploit others (Qur'an, 107:1–7). Such social commitment is praised in the Qur'an as a mark of the individual's spiritual ascent. God's love is in this spirit of sacrifice for others to create a just society (Qur'an, 4:80–81; 16:55). Takaful is essentially designed with the purpose of helping society in solving their problem by giving protection to their life and assist them in the times of needs and anticipating the future uncertainties.

4.2 Wealth protection and circulation

Protection of wealth according to the Muslim jurists is achieved through the safeguarding of ownership; through the acquisition and development; from damage; through circulation; and through protection of its values as quoted by Dusuki and Bouheraoua (2011). Safeguarding of wealth is significant as men are created with lust and desire to have possession of things in the world, including women and children, and gold and silver; as noted in the holy Quran: "fair in the eyes of men is the love of things they covet: women and sons; heaped-up hoards of gold and silver..", and the Almighty prohibits any acquisition of wealth through illegitimate means. Hoarding of wealth is also prohibited; therefore, wealth has to be circulated for the benefit of the community. Indeed, wealth has to be protected to provide justice to individuals, or the parties involved.

Specifically, in the takaful industry, protection of wealth is achievable through the elimination of the prohibited elements such as *riba*, *maysir* and *gharar*; wealth circulation; and good code of conducts. Avoiding such prohibited elements will help the industry to grow healthily, mainly as it is blessed by the Almighty for adhering to the Shariah principles. In another sense, these elements are known to cause unjust and are harmful for any society; it will lead to societal disorder and economic turmoil. The intended objectives of takaful that are Shariah compliant ensure that adherence to Shariah principles is not only in the concept and objectives, but also in all of its economic activities such as the underlying contracts of takaful that have to be Shariah compliant; these include: the participants and the takaful operator as afore mentioned; and the subject matter of the contract that should not have the prohibited elements.

4.3 Protection of human dignity

The protection of human dignity is another form of protection that is vital to be considered in the objectives of takaful. Human dignity connotes inviolability of the human person, recognition of a set of rights and obligations and guarantee of safe conduct by others, including the society and state; this is as explicitly stated in the glorious Qur'an, surah Al-Isra', verse 17: "We have bestowed dignity on the children of Adam... and conferred upon them special favors above the greater part of Our creation" (Kamali, 2007). Therefore, this paper explores on the protection of human dignity to depict its significance in human life, specifically the safeguarding of the honour bestowed on individuals.

Realizing that rights and obligations are manifestation of human dignity in all major legal traditions and Shariah, takaful should therefore provide protection for safeguarding the duties and rights of the Muslims (Kamali, 2007). A Muslim is obliged to perform duties towards the creator, Almighty Allah and to his community by eliminating harm and providing benefit. Concomitantly, this paper proposes that any ill performance of duties towards other human beings shall be protected by takaful which may include amongst others rape incest, child abuse and molestation. Such unethical and inhumane actions call for greater justice for the victims who have been discriminated against their rights. The following illustrates the statistics of such violence over the last 10 years in Malaysia.

Table 1: Statistics on Violence in Malaysia

Police Reports	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Rape	1217	1386	1431	1479	1760	1931	2454	3098	3409	3626	3595
Incest	213	246	306	254	334	295	332	360	334	385	-nil
Child Abuse	146	150	123	119	148	189	141	196	-nil	203	257
Molestation	1234	1393	1522	1399	1661	1746	1349	2243	2131	2110	2054

Source: Royal Malaysia Police and Ministry of Women, Family and Community Development

The statistics above presents the number of reported cases only, and does not include the actual number of cases which most likely is higher as many victims do not or avoid reporting due to shame for loss of dignity and fear of public perception generally. There seems to be a pattern in the number of the reported cases, which shows an increase over the last 10 years. The increase is an indication for immediate attention and protection for the victims. In fact, the cases reported are similar to the cases of the ancient Arab tribes that are criminal in nature. In the Arab tribal custom, anyone killed by a person of a different tribe, the slainer's paternal relative used to take the responsibility to make a mutual contribution for the purpose of paying the blood money on behalf of the slainer to the victims' relatives, which is a foundation doctrine of takaful (Engku Ali, 2008). Hence, this paper suggests takaful to provide protection of dignity on such basis to honor participants their rights and duties according to the goals and purpose of maqasid Shariah.

The Shariah in this regard aims at creating an equal and just atmosphere and at protecting the parties against exploitation or imbalance between their reciprocal rights and obligations. Such imbalances tend to result from a lack of fair and objective criteria by which their rights and obligations can be determined with an acceptable degree of exactitude and certainty (Omar, 1998: 44). Therefore, maqasid Shariah institutes some values, measures and standards to be upheld in carrying out daily duties and responsibilities as vicegerent in this world, indicates certain negative elements to be avoided as they would nullify the objectives of Shariah, and helps in reducing and managing the risk encountered by individuals. Takaful then is meant to protect the contributing participants from any form of injustice, especially during the presence of difficult moments when misfortune occurs, including loss of dignity.

5. Conclusion

The concept and objectives set in takaful are formed by the objectives of Islamic law that concerns the well being of the Ummah. The main objective of takaful, risk being shared among participants, and loss being borne by not an individual but shared accordingly with all participants is the beauty of takaful that fixes it well within the framework of maqasid of Shariah.

This understanding of maqasid shariah in takaful would imply the actualization of Shariah objectives in realizing the maḥallah (benefits) and preventing or repelling the mafsadah (harms) in all dimension of human life. In a more specific manner, takaful aims providing protection of life, wealth and dignity that facilitates mutual cooperation and ethical dealings within society. In fact, there is a much greater need for recognition of human rights and duties in protection of human dignity which is strongly recommended in this paper. The protection of human dignity is essential for human beings to relate to one another in pursuit of righteousness for success in this world and the world hereafter.

Thus, it is clear that the risk management concept of takaful is well within the framework of maqasid of Shariah to protect life, wealth, and dignity against any misfortune. The paper believes that upon incorporating the protection of dignity, takaful will be able to pave its direction to flourish successfully and gain global recognition as the esteemed Islamic financial institution with high Shariah influence and noble values.

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